



Securities Act (TCNZ Finance Limited) Exemption Notice 2011

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

- 1 Title**
This notice is the Securities Act (TCNZ Finance Limited) Exemption Notice 2011.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 24 March 2016.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

company means TCNZ Finance Limited

consolidated financial statements means, at any date, the latest publicly available consolidated financial statements of the Telecom group prepared in accordance with generally accepted accounting practice and on a basis consistent with the most recent audited consolidated financial statements of the Telecom group, except to the extent (if any) expressly disclosed in the notes to those statements or otherwise disclosed

generally accepted accounting practice has the meaning given to that term by section 3 of the Financial Reporting Act 1993

guaranteeing group, in relation to specified debt securities, means the group comprising—

- (a) the company; and
- (b) Telecom; and
- (c) every guaranteeing subsidiary

guaranteeing subsidiary, in relation to specified debt securities, means a subsidiary of Telecom that—

- (a) is unconditionally liable (whether or not jointly or severally with the company or any other person) to repay the securities; or
- (b) is liable to repay the securities subject only to the condition that the company or any other person has failed to do so

non-guaranteeing subsidiary means a subsidiary of Telecom that is not a guaranteeing subsidiary

Regulations means the Securities Regulations 2009

specified debt securities means debt securities of which the company is the issuer and that are guaranteed only by Telecom and 1 or more of its subsidiaries

subsidiary means a subsidiary of Telecom within the meaning of section 5 of the Companies Act 1993, and includes any other entity the financial statements of which are required to be consolidated with the financial statements of Telecom in accordance with generally accepted accounting practice

Telecom means Telecom Corporation of New Zealand Limited

Telecom group means, at any time, Telecom and each of its subsidiaries and its associates (as determined in accordance with generally accepted accounting practice) at that time.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption from section 54B(1) of Act

The company and every person acting on its behalf are exempted from section 54B(1) of the Act to the extent that that provision requires the company to provide, at the request of a holder of specified debt securities,—

- (a) the financial statements referred to in regulation 44(d)(ii) of the Regulations; and
- (b) all documents that are required by any enactment or rule of law to be incorporated in, to be attached to, or to accompany those financial statements.

6 Condition of exemption about information that must be sent on request

- (1) The exemption in clause 5 is subject to the condition that the company must, on receipt of a request from a holder of specified debt securities for the financial statements referred to in regulation 44(d)(ii) of the Regulations, send or cause to be sent to the security holder—

Telecom group financial statements

- (a) a copy of the most recent annual or half-yearly consolidated financial statements of the Telecom group (together with a copy of the audit report on those financial statements, if they are required to be audited under applicable law); and
- (b) all documents that are required by any enactment or rule of law to be incorporated in, to be attached to, or to accompany those financial statements; and
- (c) a statement to the effect that the financial statements being sent are the annual or half-yearly consolidated

financial statements of the Telecom group rather than those required by regulation 44(d)(ii) of the Regulations (which requires the financial statements of the guaranteeing group to be sent); and

Information about guaranteeing group

- (d) a description or list of the members of the guaranteeing group as at the date of the statement of financial position that forms part of the financial statements referred to in paragraph (a); and
- (e) an unaudited pro forma statement showing the consolidated assets of the guaranteeing group less the consolidated liabilities of the guaranteeing group as at the date of the statement of financial position that forms part of the financial statements referred to in paragraph (a); and

Level of assets held by non-guaranteeing subsidiaries

- (f) a statement of the aggregate amount of the total tangible assets of the non-guaranteeing subsidiaries (excluding balances with other members of the Telecom group) as at the date of the statement of financial position that forms part of the financial statements referred to in paragraph (a); and
- (g) a statement to the effect that the aggregate amount in paragraph (f) is less than 30% of the amount of the total tangible assets of the Telecom group (excluding balances with other members of the Telecom group) at that date; and

Level of earnings of non-guaranteeing subsidiaries

- (h) a statement of the aggregate amount of consolidated earnings before interest and tax (but excluding revaluations) of the non-guaranteeing subsidiaries for their most recent financial year or half-year end; and
- (i) a statement to the effect that the aggregate amount in paragraph (h) is less than 10% of the amount of the aggregate consolidated earnings before interest and tax (but excluding revaluations) of the Telecom group for that period; and

Directors' statement

- (j) a statement to the effect that the directors of the company are of the opinion that, at the date of the statement of financial position that forms part of the financial statements referred to in paragraph (a), those financial statements, when read together with the pro forma statement referred to in paragraph (e), provide a reasonable basis on which to assess the financial position of the guaranteeing group in relation to the specified debt securities.
- (2) The company must send or cause to be sent to the security holder the information referred to in subclause (1)—
 - (a) without requiring the payment of a fee; and
 - (b) as soon as practicable but, in any event, within 5 working days of the company receiving the request.

7 Condition of exemption about level of assets and earnings of non-guaranteeing subsidiaries

The exemption in clause 5 is subject to the condition that, at any date on which the company sends, or causes to be sent, to a holder of specified debt securities the information referred to in clause 6(1),—

- (a) the aggregate amount of the total tangible assets of all the non-guaranteeing subsidiaries (excluding balances with other members of the Telecom group) is not considered by the directors of the company to be material in comparison with the amount of the total tangible assets of the Telecom group (excluding balances with other members of the Telecom group), taking into account the level of total tangible assets that is permitted to remain outside the guaranteeing group as set out in clause 6(1)(g); and
- (b) the aggregate amount of consolidated earnings before interest and tax (but excluding revaluations) of all the non-guaranteeing subsidiaries for their most recently completed accounting period is not considered by the directors of the company to be material in comparison to the amount of the consolidated earnings before interest and tax (but excluding revaluations) of the Telecom

group for that period, taking into account the level of consolidated earnings that is permitted to remain outside the guaranteeing group as set out in clause 6(1)(i).

Dated at Wellington this 15th day of March 2011.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

D W Mayhew,
Member.

Statement of reasons

This notice comes into force on the day after its notification in the *Gazette* and expires on 24 March 2016.

The exemption relates to debt securities that are issued by TCNZ Finance Limited and that are guaranteed by Telecom Corporation of New Zealand Limited and some (but not all) of the members of the Telecom Corporation of New Zealand Limited group (**Telecom group**).

The notice exempts TCNZ Finance Limited from the requirement under regulation 44(d)(ii) of the Securities Regulations 2009 to provide financial statements of the guaranteeing group at the request of holders of the debt securities.

The exemption is subject to a number of conditions. The principal ones are—

- that consolidated financial statements for the Telecom group and an unaudited pro forma statement that shows the consoli-

dated assets less the consolidated liabilities of the guaranteeing group are provided at the request of holders of the debt securities:

- that the aggregate amount of total tangible assets of all non-guaranteeing subsidiaries (excluding balances with other members of the Telecom group) did not exceed 30% of the total tangible assets of the Telecom group (excluding balances with other members of the Telecom group):
- that the aggregate amount of earnings before interest and tax (but excluding revaluations) of all non-guaranteeing subsidiaries did not exceed 10% of the aggregate earnings before interest and tax (but excluding revaluations) of the Telecom group:
- that the financial statements are accompanied by a statement to the effect that the directors of TCNZ Finance Limited are of the opinion that those financial statements, when read together with the pro forma statement, will provide a reasonable basis on which to assess the financial position of the guaranteeing group in relation to the debt securities.

The Commission considers that it is appropriate to grant the exemption for the following reasons:

- TCNZ Finance Limited does not currently prepare financial statements for the guaranteeing group. Preparing these financial statements would impose a significant cost, given the size of the group:
- the conditions require the directors of TCNZ Finance Limited to ensure that the guaranteeing group accounted for 90% of earnings and 70% of assets of the Telecom group during the most recent financial period:
- the conditions require those directors to ensure that the non-guaranteeing subsidiaries do not account, on an ongoing basis, for a material proportion of the group's earnings and assets, having regard to those levels:
- the conditions require those directors to certify with each request received that the information sent to investors provides a reasonable basis on which to assess the financial position of the guaranteeing group. Therefore, bondholders should not

be materially disadvantaged by receiving this information in
place of guaranteeing group accounts.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 17 March 2011.
This notice is administered by the Securities Commission.
